

**CMP Nos. 9586, 9588, 9589 and 9590  
of 2021 in RFA No. 128 of 1993**

**16.09.2021**

**Present:** Mr. Sudhir Bhatnagar and Mr. Desh Raj Thakur, Additional Advocate Generals with Mr. Narinder Thakur. Mr. R.P. Singh and Mr. Kamal Sharma, Deputy Advocate Generals, for the non-applicants/appellants.

Mr. B.M. Chauhan, Sr. Advocate, with Mr. Hominder Ghezta, Advocate, for the applicants/respondents.

**CMP No. 9586 of 2021**

By way of instant application filed under Order 1 Rule 10 (2) read with Section 151 CPC, prayer has been made on behalf of the applicants/proposed legal representatives of deceased respondent No.1, Sh. Chain Ram, who has expired on 18.12.1999 for their substitution.

Since despite sufficient opportunities, no reply has been filed to the aforesaid application and as such, this Court has no option but to decide the same, on the basis of material available on record.

Record reveals that respondent No.1, Sh. Chain Ram, has expired on 18.12.1999, during the pendency of reference petition before court below, leaving behind his LRs, as detailed in para-2 of the application. Perusal of judgment dated 30.12.1999, passed by Division Bench of this Court in RFA bearing No.128 of 1993, reveals that factum with regard to death of respondent No.1, Sh Chain Ram, was brought to the notice of Division Bench at the time of final disposal but this Court having taken note of the fact that appeal having been filed by the non-applicants/appellants, being dismissed, categorically recorded in the order that dismissal of appeal of the appellant, will not prejudice the right of the legal

representatives of deceased respondent. Since, right to sue survives in favour of the legal representatives of aforesaid deceased respondent No.1 and they are entitled to money falling in the share of aforesaid respondent No.1, this Court sees no impediment in accepting the prayer made in the application and accordingly, the same is allowed. Persons, as detailed in para-2 of the application, are ordered to be substituted in place of aforesaid deceased respondent No.1 Sh. Chain Singh, whose name is otherwise ordered to be deleted from the array of the parties. Registry to carry out necessary correction in the memo of parties annexed with the application. Application stands disposed of.

**CMP No. 9588 of 2021**

By way of instant application filed under Order 1 Rule 10 (2) read with Section 151 CPC, prayer has been made on behalf of the applicants/respondents No.1 (a) to 1(e), 2 to 4 & 6, for their substitution in place of deceased respondent No.5, Smt. Phulu Devi, who has expired on 11.11.2001.

Since despite sufficient opportunities, no reply has been filed to the aforesaid application and as such, this Court has no option but to decide the same, on the basis of material available on record.

Careful perusal of material available on record, clearly reveals that respondent No.5, Smt. Phulu Devi has expired on 11.11.2001, after disposal of the appeal bearing RFA No. 128 of 1993, having been filed by the non-applicants/appellants. Since, Division Bench of this Court vide judgment dated 31.12.1999 while dismissing the appeal having been filed by non-applicants/appellants, has categorically recorded in the judgment

that dismissal of the appeal shall not prejudice the right of LRs of deceased respondent coupled with the fact that money falling in the share of respondent No.5, Smt. Phulu Devi, is liable to be distributed in favour of all her legal representatives, this Court sees no impediment in accepting the prayer made in the application and accordingly, the same is allowed. Persons, as detailed in para-2 of the application, are ordered to be substituted in place of aforesaid deceased respondent No.5, Smt. Phulu Devi, whose name is otherwise ordered to be deleted from the array of the parties. Registry to carry out necessary correction in the memo of parties annexed with the application. Application stands disposed of.

**CMP No. 9589 of 2021**

By way of instant application filed under Section 151 of CPC, prayer has been made on behalf of the applicants/respondents, for release of mortgaged property.

Despite sufficient opportunities, no reply has been filed to the aforesaid application.

Having perused the averments contained in the application, this Court finds that during the pendency of the appeal, applicants/respondents had filed application bearing CMP No.157 of 1994, for release of award amount deposited in the Registry of this Court, which was allowed vide order dated 14.07.1994. Vide aforesaid order, this Court while releasing award amount, ordered that 50% amount shall be released without security or remaining 50% with security. In compliance to aforesaid direction, passed by this Court in CMP No. 157 of 1994, dated 14.07.1994, predecessor-in-interest of the applicants/respondents including other respondents, furnished security by way of mortgage of the land

comprised in Khasra Nos. 436, 464, 503,592, 620, 622 & 622/1, Kitta 7, total measuring 0-54-71 hectares for sum of Rs.45,000/-. Copy of jamabandi for the year 2012-13, placed on record, depicts the aforesaid entry made in the record as per mutation No.514. Since, appeal having been filed by non-applicants/appellants stands finally decided vide judgment dated 30.12.1999 and no appeal whatsoever, if any, has been filed against the aforesaid judgment in the superior court of law by either of the parties, this Court sees no impediment in accepting the prayer made in the application and accordingly, the same is allowed. Tehsildar Kothkahi, District Shimla is directed to delete the entry of mortgage, as was made in the revenue record by virtue of mutation No.514, in terms of order dated 14.7.1994, passed by this court in CMP No. 157 of 1994. Needful shall be done by the concerned authorities, within a period of two weeks. Application stands disposed of.

**CMP No.9590 of 2021**

For the reasons stated in the application, the same is allowed and applicants/respondents are exempted from filing the English translation of the documents in issue. Application stands disposed of.

**(Sandeep Sharma)**  
**Judge**

**16<sup>th</sup> September, 2021**  
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